

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Progeny LMS, LLC)	RM No. 10403
)	
Amendment of Part 90 of the Commission's)	
Rules Governing the Location and Monitoring)	
Service to Provide Greater Flexibility)	

To: Chief, Wireless Telecommunications Bureau

Comments of SchlumbergerSema Inc.

SchlumbergerSema Inc. ("SSI") hereby opposes the initiation of any proceeding in response to the above-captioned Petition for Rulemaking ("Petition") submitted by Progeny LMS, LLC ("Progeny").¹ SSI is the successor to the CellNet7 technology and assets of CellNet Data Systems, Inc. ("CellNet").² CellNet extensively participated in the rulemaking proceedings in PR Docket No. 93-61 (the "LMS Rulemaking") in which the Commission established the rules for the Location and Monitoring Service ("LMS"). For the reasons discussed below, SSI believes the Progeny Petition is ill-advised and urges the Commission not to initiate the rule making proceeding requested by Progeny.

¹ See *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Location and Monitoring Services*, RM No. 10403, *Public Notice*, DA 02-817 (rel. Apr. 10, 2002); *Public Notice*, DA 02-1070 (rel. May 7, 2002) (extending comment dates).

² Using a combination of Part 101 Multiple Address System licenses and spread spectrum Part 15 devices, SSI has created a low-cost, private internal telemetry services network which allows it to transmit and receive data for the remote monitoring and control of devices, primarily utility meters. SSI, as did its CellNet predecessor, utilizes the 902-928 MHz band for its unlicensed local area network connecting the endpoint (meter) devices to the MAS network.

In its Petition, Progeny seeks to ease the operational and technical limits placed on LMS licensees as a result of the extensive deliberations in the LMS Rulemaking.³ Progeny's primary justification for its Petition is the lack of any success by LMS licensees, generally, and Progeny, in particular, to attract the level of capital from investors and the commitment of equipment manufacturers necessary for the development of the LMS industry.⁴ Pointing to the current LMS rule restrictions, the present state of the economy, and the flexibility the FCC has granted in other services that has allowed licensees in those services to provide analogous location and monitoring services in competition with LMS, Progeny urges the Commission to take steps that will, in its view, create a greater likelihood for the success for the group of current LMS licensees.⁵ In doing so, Progeny suggests several significant changes to the technical restrictions imposed on Part 15 devices operating in the 902-928 MHz band, as well as the elimination of the "safe harbor" rule contained in Section 90.361.⁶

Contrary to Progeny's suggestion that the existing regulatory structure for the 902-928 MHz band is the result of "political influence" wielded by then-existing users of the band,⁷ the current LMS rules are the result of a carefully crafted compromise in the LMS Rulemaking. As Progeny recognizes, the Commission adopted permanent regulations governing automatic vehicle monitoring devices and, in the process, created a broader class of licenses for a Location and Monitoring Service, envisioning at the time that LMS would fulfill "an important need for

³ Petition at 23-29.

⁴ *Id.* at 15-16.

⁵ *Id.* at 17-21.

⁶ *Id.* at 27-29.

⁷ *See id.* at 22.

location and monitoring services that would aid the transportation industry and the economy in general.”⁸

Not everyone shared the LMS licensees’ enthusiasm for these anticipated uses; to the contrary, many commenters questioned whether such services, appropriately restricted to their primary purpose, would fulfill any public interest that was not already being served by other providers. Moreover, CellNet and other Part 15 device manufacturers urged extreme caution by the FCC in expanding the use of this band by the few authorized licensees of then-unconstructed AVM systems, because the 902-928 MHz band already had become an invaluable tool for the development of low-cost, highly efficient radio-based solutions operating on an unlicensed basis under Part 15 to satisfy a variety of business and consumer requirements. It was therefore critical that any changes to the existing AVM rules to provide for expanded utilization of the AVM service must also accommodate the co-equal sharing of the band by Part 15 devices operating in accordance with Sections 15.247 and 15.249 of the Rules.

For the most part, the new rules adopted in the LMS Rulemaking accommodated those positions. Specifically, the Commission adopted technical regulations (generally accepted by the then-pending applicants for AVM systems) that would accommodate broad use of the band for a wide variety of location and monitoring services by both wideband and narrowband licensed LMS systems without creating undue interference to existing and likely uses of the band by Part 15 authorized devices. Interestingly, Progeny does not dispute that, given the “shared” use of this band, LMS was expressly intended to be a “niche” service; in fact, most of the service rules that were adopted therein – and which Progeny now urges should be relaxed or removed – were designed to allow accommodation of that “niche” without causing severe disruption to the other equally significant uses of the spectrum.

⁸ *Id.* at 21.

While it cannot be denied that the FCC has over time adopted a more liberal view toward the flexible use of licensed spectrum, it has not done so blindly. Certainly in the LMS Rulemaking, the Commission already considered the balance between flexibility and efficient, shared use of the band, and expressly rejected the LMS industry's request for broader authority. For example, in first adopting the LMS regulations, the Commission agreed with "numerous commenters who argue that creating such a broad messaging and data service would be an inappropriate use of this spectrum. . . . Our rules make adequate provision elsewhere for this type of communications."⁹ The Commission went on to note that "[w]e do not intend for this service to be used for general messaging purposes."¹⁰ Similarly, on reconsideration of the initial rules, the Commission reviewed its restriction on LMS interconnection:

[w]e continue to believe that our decision regarding limitations on multilateration LMS interconnection reflects a necessary balancing of the interests of LMS providers and other users of the 902-928 MHz band. Relaxing restrictions on interconnection could increase the potential for interference in the band by allowing for additional message traffic. . . . We note that other services, such as personal communications services (PCS) and cellular telephone, are available for that type of use."¹¹

It is certainly ironic that the Commission chose to authorize the use of this heavily trafficked band for LMS because it did not believe that the promise of these technologies could be readily accommodated in other spectrum, but expressly rejected the broader use of this band for "plain old messaging services" because such services would be readily available to the public from other resources.¹² Yet it is the very development of competing location and monitoring

⁹ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, PR Docket No. 93-61, *Report and Order*, 10 FCC Rcd 4695, 4709 (1995) ("Report and Order").

¹⁰ *Id.*

¹¹ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, PR Docket No. 93-61, *Memorandum Opinion and Order*, 12 FCC Rcd 13,942, 13,948 (1997).

¹² *See Report and Order* at 4709.

services technologies and services in other frequency bands – particularly the PCS and Cellular spectrum -- that Progeny now claims is threatening to take a large part of the market for these services. Indeed, because other CMRS licensees are available to serve its primary market, Progeny believes it is the Commission’s responsibility to remove appropriate service restrictions so that Progeny can expand its use of the spectrum to go after theirs. Clearly, this is no basis for upsetting the carefully balanced rules adopted in the LMS Rulemaking.

No less significantly, the record in the LMS Rulemaking overwhelmingly established the substantial public benefits stemming from the existing unlicensed operations in the 902-928 MHz band, including CellNet’s, and the Commission took significant steps to assure that the use of the band by LMS would not unreasonably interfere with both existing and future use of the band for unlicensed services and systems. To that end, and as a most significant element of the careful balance crafted in the LMS Rulemaking, the Commission, for the first time, adopted reasonable threshold standards for determining presumptively when Part 15 devices are not creating “harmful” interference to LMS systems, the so-called “safe harbor” guidelines, giving Part 15 devices a form of “co-equal” status when operated in conformity with those thresholds.¹³

In the LMS Rulemaking, the Commission “estimated that several million Part 15 devices have been sold and are being used every day to provide a wide variety of valuable services to the American public” and stated that “[i]n addition to the enormous benefits to both businesses and consumers that will result from the continued growth in the use of the Part 15 industry, our nation’s economy also benefits due to the continued development of these new, advanced radio

¹³ This was particularly important for systems like those designed and marketed by CellNet, since its wide-spread deployment could make system owners easy targets for a complaint from an affected LMS licensee, notwithstanding the lack of any empirical evidence that the CellNet local area network was the source of any interfering signals.

technologies by American companies.”¹⁴ The Commission appropriately concluded that “the procedures described above afford the best opportunities for amateur, Part 15 and multilateration LMS operations to coexist in the 902-928 MHz frequency band.”¹⁵

Notwithstanding Progeny’s assertion that the Commission needs to re-examine this balance, there are no fewer public interest benefits deriving from – and certainly no less justification today for the maintenance of – the safe harbor rule today. While unlicensed devices are being designed in many other bands, the 902-928 MHz remains one of the most prolific resources for the development of a panoply of wireless devices and systems that substantially improve this nation’s safety and economic well being. Progeny’s lack of financial success notwithstanding, there is simply no basis for threatening the viable use of this band under Part 15 in order to make LMS substantially more than the advanced location and monitoring service that the Commission envisioned in the LMS Rulemaking. But that is *clearly* what Progeny has in mind in urging a substantially liberalized and flexible use of this shared spectrum by LMS licensees.

While the technical restrictions imposed on LMS in the LMS Rulemaking may have had some impact on the success of the industry, the failure of the LMS licensees to flourish is not necessarily a direct result of these restrictions, nor is this failure a sufficient basis for reconsidering the rules that govern this band and upsetting the balance that was created in that proceeding.¹⁶ It is not the Commission’s job to guarantee the success of any business venture,¹⁷

¹⁴ *Report and Order* at 4699-4700.

¹⁵ *Id.* at 4717.

¹⁶ SSI notes that Progeny admits that the current LMS service rules only partly contribute to its apparent problems accessing capital and equipment. Petition at 21.

¹⁷ Especially when spectrum is acquired at auction, bidders know that prices paid at auction are market-driven, based on awareness of all applicable regulatory restrictions. Indeed, the following disclaimer, typical for FCC auctions, was contained in page 3 of Tab B of the LMS

but rather – as Progeny acknowledges¹⁸ -- to assure that the valuable public resource that is the radiofrequency spectrum is put to the most effective and efficient use. While the very narrow LMS services that its proponents tried to develop in this band may not be widely in use, the fact remains that the band is one of the most heavily occupied in the entire radio spectrum. Indeed, the most likely consequence of liberalizing the rules for LMS to allow licensees to provide just another CMRS type offering is not the expanded use of the band, but rather the creation of an enormous regulatory and administrative burden on the agency in sorting out what would almost certainly be a myriad of interference complaints from existing Part 15 systems.

Progeny does not deny that the widespread use of the 902-928 MHz band by Part 15 devices serves the public interest. Nor does it claim that without the rules changes suggested by Progeny, the public benefits perceived by the Commission in the creation of the LMS cannot otherwise be achieved. Rather, in essence, Progeny's Petition is nothing more than a petition for reconsideration of the 1995 Report and Order.¹⁹ But no new facts are presented (other than Progeny's recognition that the investors are not willing to provide capital for the development of this niche market, when similar, competitive offerings are now available from other wireless providers). Moreover, Progeny is unable to offer any new facts or arguments to overcome the most critical elements of the case for retaining the existing rules: the continued importance of

Bidder Information Package: "The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture."

¹⁸ See Petition at 22.

¹⁹ Progeny's predecessor, MobileVision, already unsuccessfully requested reconsideration of the safe harbor rule. *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for*

Part 15 operations in the 902-928 MHz band, and the need to assure balanced use of this spectrum by all existing users, both licensed and unlicensed.²⁰

CONCLUSION

For the foregoing reasons, Progeny has not justified the Commission's use of its limited resources to initiate the rulemaking requested. Therefore, the Petition should be denied.

Respectfully submitted,

SchlumbergerSema Inc.

By: /s/
Stacy B. Williams
Assistant Secretary
100 Milton Park
30000 Mill Creek Avenue
Suite 100
Alpharetta, Georgia 30022

Dated: May 15, 2002

Automatic Vehicle Monitoring Systems, PR Docket No. 93-61, *Order on Reconsideration*, 11 FCC Rcd 16,905, 16,914-16,915 (1996).

²⁰ Furthermore, Progeny's reliance on Section 303(y) of the Communications Act is incorrect. Petition at 14. Section 303(y) requires the Commission to consider a number of factors when determining the extent of operational flexibility it grants. Among these factors is whether such flexible use would be in the public interest and would not cause harmful interference among users. Initiating a rulemaking proceeding to adopt Progeny's proposals would severely hamper existing Part 15 users, directly contrary to the public interest benefits provided by such operations and resulting in harmful interference to Part 15 operations.